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**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**[NPS-WASO-NRNHL-24004]**

**[PPWOCRADIO, PCU00RP14.R50000]**

**Comments Regarding Listing on the National Register of Historic Places of Statue of Liberty Enlightening the World, Liberty Island, New York Harbor**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the National Historic Preservation Act of 1966, the National Park Service is publishing New York (NY) and New Jersey (NJ) State Historic Preservation Officers' (SHPOs) comments to the National Park Service Federal Preservation Officer (FPO) as well as responses to SHPOs' comments by the Keeper of the National Register (Keeper) prior to including the property in the National Register (NR).

**SUPPLEMENTARY INFORMATION:** This notice includes comments on the NR Nomination entitled "Statue of Liberty Enlightening the World" received by the FPO from the NY SHPO and the NJ SHPO, and the responses by the Keeper to these comments.

**NY SHPO:** The NY SHPO reviewed the following nomination and responded to the FPO within 45 days of receipt of the nomination. The NY SHPO objected to the period of significance established for the Statue, the period of significance proposed end date of 1957 (instead of 1986) for the district as a whole, and the omission of an area of landscape architecture and architecture as areas significance for the period 1957-1986. The specific comments received by the FPO from the NY SHPO are as follows:

I am writing in response to your request for comments on the most recent revised draft for the Statue of Liberty Enlightening the World Historic District. Ruth Pierpont has retired and I am the new Deputy State Historic Preservation Officer for New York.

I have reviewed the file and our comments remain the same as they were for the two previous drafts. Unfortunately, the New York State Historic Preservation Office cannot support a period of significance that extends "in perpetuity" because we do not believe it is possible to evaluate the significance of events that have not yet occurred. Absent any theme, place, or time in which to place these unknown events, there is no possible context in which to evaluate their meaning. This opinion, which I support, is explained in more detail in Ruth Pierpont's letter of June 6, 2012.

We would also like to re-state our support of a period of significance for the landscape elements that extends to include the 1986 alterations for the statue's centennial. The fact that you have judged changes related to its centennial as non-contributing after extolling the statue's unending significance is among the reasons that we feel a period of "in perpetuity" is unwise. At the very least, it will generate unnecessary confusion in the compliance process as each newly-proposed project then automatically becomes significant, regardless of its effect on the resource.

**Keeper's Response to NY SHPO Comments:** The Statue of Liberty (including its pedestal) is a singular (Keeper's emphasis), exceptionally significant, individually NR-eligible historic structure. The significance of the Statue to the

nation is, and will always be, both transcendent and perpetual. It is not unprecedented for a property with transcendent significance to be listed in the NR with period of significance that is ongoing. The NR listing for National Mall Historic District in Washington, DC--under Criterion A--is another example. The Keeper notes that several properties located in the State of New York, including Our Lady of Mount Carmel Grotto, Richmond County, New York (listed in the NR in 2000), and Bohemian Hall and Park, in Queens County, New York (listed in the NR in 2001), also have ongoing periods of significance because of their recognition as NR-eligible Traditional Cultural Properties.

The nomination as written is for a historic district. The Keeper notes that it is a long-established, and common NR program practice for an individually eligible or individually listed historic structure located within a larger NR-listed historic district to have a different period of significance than the district as a whole.

Based on all relevant documentation and comments received for the nomination, the Keeper finds that the proposed end date for the period of significance for the district as a whole—1957—is appropriate. The Keeper concurs with the assessment stated in section 7, page 28 of the nomination, which

states: “Changes made to key elements of the Liberty Island Grounds in the mid-1980s and alterations over time to contributing buildings and structures preclude the District’s eligibility in the areas of Landscape Architecture or Architecture.”

On balance, the Keeper also finds that the post-1957 changes in the landscape and buildings for the district as a whole (Keeper’s emphasis), do not appear to satisfy the “exceptional importance” threshold embodied in NR Criterion

Exception G for properties that have achieved significance within the past fifty years.

**NJ SHPO:** The NJ SHPO reviewed the nomination and responded to the FPO within 45 days of receipt of the nomination. The NJ SHPO objected to the nomination document's failure to recognize the State of New Jersey's jurisdictional claim over a portion of Liberty Island and other related matters. The specific comments received by the FPO from the NJ SHPO are as follows:

**NJ SHPO Comment 1 (Concerning Section 2a)**

The opening page of the Registration Form should indicate that the *two* states in which this district is situated are New York *and* New Jersey, and that the two counties are New York *and* Hudson.

**Keeper's response to NJ SHPO Comment 1:**

The Keeper notes that the most important function of Section 2a. is to readily identify the location of the property in its most common format. In the present case, the Keeper has concluded, especially in light of the jurisdiction issues raised by the NJ SHPO, that the most appropriate way to achieve this purpose is to have Section 2a. of the Nomination Form read as follows for the items noted below:

Street & number: Liberty Island, New York Harbor

City or town:

State, County:

Vicinity: No

Not For Publication: No

## **NJ SHPO Comment 2 (Concerning Section 7, page 6)**

The narrative should explain that while the majority of Liberty Island is situated within the State of New York, including the ground upon which the Statue stands, the western portion of the island (approximately 3.4 acres) is ground within New Jersey borders. In 1834, a determination of the boundary between New York and New Jersey was the subject of a bi-state compact, subsequently approved by Congress. Congressional approval of this compact acknowledged New Jersey's ownership of the submerged lands west of the midline of the Hudson River. In 1857 Bedloes Island (today's Liberty Island) was carefully surveyed and mapped. It was found to be 9.9 acres in size to mean high water, 10.7 acres in size to mean low water. An additional 183,756 square feet of filled land, or approximately 4.22 acres was added to Liberty Island in stages between 1901 and 1952.

In light of the above, the statement that "the *entire* island is Federally owned" (Section 7, page 6) should be revised. New Jersey's position has historically been that the portion of the island that remains within New Jersey's sovereign jurisdiction is also *owned* by the State of New Jersey, as part of its ownership of riparian lands in New Jersey. The State of New Jersey has a long history of selling portions of its riparian lands at fair market value, to appropriate users, in the form of "riparian grants." The National Park Service bought a riparian grant from New Jersey in 1904 to legitimize its expansion of Ellis Island, but even though New Jersey sought from the 1930s to the 1950s to reach agreement with the Federal government to convey title for the filled portions of Liberty Island, no agreement, and therefore no such transfer, was effected. No Federal purchase of the land has subsequently been completed. The Federal government has continued to use the property

without obtaining a riparian grant. That situation has not changed. As a result, the State of New Jersey's ownership interest in the land artificially filled after 1834 was not extinguished and still remains in effect.

In addition, the further statement that "the land mass [of Liberty Island] is considered part of New York County, New York." (Section 7, page 6) should also be revised. Only the portion of Liberty Island that reflects the island as it existed in 1834 lies within New York County, New York. In our previous comments on the earlier draft, we provided a map that delineated the area the island's fill, showing that New Jersey's territory comprises approximately 3.4 acres of the island's 14.1 acres. (see attachment)

New Jersey disagrees with the wording of footnote #5 (Section 7, page 6), which has a tendentious effect. The National Park Service has every reasonable basis to conclude, as New Jersey holds, that Liberty Island is situated in both states, and does not need to claim in this footnote that it is not pronouncing upon an issue that Section 2 of the document clearly does.

Your letter cites the 1998 Supreme Court decision in *New Jersey v. New York*, decided in New Jersey's favor (a point not mentioned in footnote #5), in which it was held that the portion of Ellis Island composed of landfill emplaced subsequent to the Compact of 1834 *has remained in the territory of New Jersey since the time of that compact*. With respect to the neighboring Liberty Island, the factual circumstances are nearly identical and the same legal reasoning applies that formed the basis of the Ellis Island decision. As a result, the National Park Service should recognize New Jersey sovereignty over the western portion of the island.

### **Keeper's response to NJ SHPO Comment 2 (Concerning Section 7, page 6)**

The Keeper disagrees with the NJ SHPO's contention that, "The National Park Service has every reasonable basis to conclude, as New Jersey holds, that Liberty Island is situated in both states..." The Keeper agrees with the NPS assertion that boundary issues between states are matters of original jurisdiction with the U.S. Supreme Court, and that neither the Keeper nor the National Park Service are fitted by expertise or authority to pronounce upon them. Since the issue regarding jurisdiction that was raised by the NJ SHPO cannot be resolved within the context of this nomination, the Keeper has determined that the most appropriate course of action is to ensure that, as approved by the Keeper, the paragraph under "Setting" on page 7-6 reads:

Liberty Island is located within New York Harbor, one of the world's busiest shipping ports. It is accessed by ferries that run regularly from landings at Liberty State Park in Jersey City, New Jersey, and Battery Park at the southern tip of Manhattan, New York City. The island is manifestly flat, with an average elevation of about 15 feet (ft) above sea level. The landform is approximately a quarter-mile long and about .15-mile wide at its widest point. Two significant filling events, conducted on the west side of the island by the US Army during the First World War and on the northwestern end of the island by the National Park Service in the early 1950s, accreted the island to its current 14.1-acre form. Liberty Island is surrounded by New Jersey state waters. The Statue in its entirety was constructed and remains within the territorial jurisdiction of the State of New York. The entire island is administered by the National Park Service. The Statue of Liberty is located on the southern portion of Liberty Island and is immediately surrounded on the east, west, and south sides by grass lawns. Visitors arrive at the island's West Pier after a

ferry trip from Manhattan or Jersey City and usually walk to the Statue on the island's primary circulation system, a wide paved system of malls and plazas that conveys visitors to the main entrance to the Statue. The malls and plazas are lined with linden trees and yew hedges that give the setting a park-like feel. A secondary circulation system consisting of interior paths and a perimeter promenade offers other views of the Statue and New York Harbor from a variety of vantage points. Operational facilities such as maintenance buildings and staff housing are located primarily in the northwest corner of the island and are screened from public view in most directions. (\*\*Note: footnote # 5 referenced in the NJ SHPOs comments regarding the above paragraph has been corrected to read as footnote #6 in the final nomination document.)

AUTHORITY: The National Historic Preservation Act of 1966, 54 U.S.C. § 302104 (c)(5)-(6) of; 60.13 of 36 CFR Part 60.

Dated: August 14, 2017

J. Paul Loether,

Chief, NR of Historic Places/National Historic Landmarks Program and  
Keeper, NR of Historic Places.

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